69

HIGH COURT OF CHHATTISGARH AT BILASPUR
Misc. Appeal No. 721/2005

APPELLANT K. Chandra Mauli

VERSUS

RESPONDENTS Kumari Chanchala Dewangan and others

Judgment post for 01-5-2007

Sd/-
Dhirendra Mishra
Judge

70

HIGH COURT OF CHHATTISGARH AT BILASPUR
Misc. Appeal No. 721/2005

APPELLANT
Contractor of principal employer Non-applicant No. 1

K. Chandra Mauli, C.K. Chandra Murali, Contractor, EWS 558, Vaishalinagar, Bhilai, Distt.Durg (C.G.)

VERSUS

RESPONDENTS

1. Kumari Chanchala Dewangan, D/o. Prakash Dewangan, aged about 24 years, R/o. HSCL Colony, Maroda, Distt. Durg (C.G.)
Applicant/Claimant

2. Manager/Managing Director, Bilhai Steel Plant, Bhilai, District Durg (C.G.)
Principal Employer/JD, Non-applicant No. 2

3. Divisional Manager, The New India Assurance Com. Power House, Bhilai, Distt. Durg (C.G.)
Insurer/Non-applicant No. 3

Present: Shri Amiyakant Tiwari, Advocate for the appellant.
Shri Uttam Pandey, Advocate for respondent No. 1.
Shri A.S. Gaharwar, Advocate for respondent No. 2.
Shri P. Jaiswal, Sr. Advocate with Shri Sankalp Jaiswal, Advocate for the respondent No. 3.

J U D G M E N T

Per Dhirendra Mishra, J

The appellant/Non-applicant No. 1 has preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 (In short, hereinafter referred to as the Act) against the award dated 11-5-2005 passed in Case No. 79/Category-B/1/2002/W.C./Non-Fatal by Commissioner for Workmen Compensation, Labour Court, Durg (In short, hereinafter referred to as the Commissioner) whereby the learned Commissioner has awarded a sum of Rs. 2,37,546/- as compensation in favour of the applicant/respondent No. 1 and the appellant has been made liable for satisfying the compensation awarded.

(The parties hereinafter shall be referred to as per their description in the impugned award.)

The facts of the case, in brief, are that the applicant filed an application for compensation on the ground that while under the

employment of non-applicant No. 1 who was working as contractor with non-applicant No. 2, she sustained grievous injuries on 13-3-2002 at about 1.00 p.m. while filling gravel in coak tippler of Bhilai Steel Plant at that time, Loco hit her while reversing. She was given treatment firstly in Astha Nursing home and thereafter Government Hospital, Durg and during treatment, for the safety of life, her leg was amputated from just below the knee. The non-applicant No. 1 in his written statement, denied that applicant sustained the above injury during the course of her employment with him, Gate Pass of applicant was prepared initially as a labour for work on Coak Oven, Coal Chemical Department for the purpose of cleaning Capital Repair however, after issuance of Gate Pass, she never joined her duties. No work of filling gravel on coak tippler was going on as alleged. The non-applicant also denied the claim of the applicant and stated that the non-applicant No. 1 was awarded the contract and in case, the applicant is held entitled for compensation, then they have a right to be indemnified against the non-applicant. The Non-applicant No. 3/ insurer also denied the claim of the applicant.

On the basis of pleadings of the respective parties, issues were framed and the Commissioner passed the impugned award with the finding that the applicant who was aged 23 years and was drawing wages at the rate of Rs. 2,400/- per month, sustained injuries during the course of her employment with non-applicant No. 1 and the non-applicant No. 1 is liable for payment of compensation of Rs. 2,37,546/- to the applicant. The extent of loss of earning capacity has been assessed as 75% and the principal employer has a right to be indemnified by the contractor and the liability has been saddled on non-applicant No. 1.

Learned counsel for the appellant herein submits that the Commissioner has passed the impugned award by ignoring the documentary and oral evidence available on record. There is ample evidence available on record to show that the claimant did not sustain the above injuries during the course of her employment, accident occurred at a place where the applicant was not engaged to work as she was not engaged for any work relating to coak tippler

72

and the Gate Pass was obtained in the name of the applicant for the work of Coal Chemical Department. It is further submitted that the compensation has been computed on the basis of certificate issued by medical practitioner regarding injuries and disabilities without any assessment of loss of earning capacity and without examining the qualified medical practitioner in non-compliance of Section 4(1)(c)(ii) of the Act. It is also submitted that where the materials available on record would not reasonably lead to finding of fact, where the material piece of evidence has not been taken into consideration which if considered would negative the finding of fact and award is passed misreading of the evidence, the above finding becomes a substantial question of law, and therefore, the award is appellable. Reliance is placed on the judgment in the matters of **Managing Director, O.R.T. Co. Ltd. –v- S. Rama Mohan Rao** (1988 ACJ 184), **New India Assurance Co. Ltd. –v- Sammayya alias M. Shankar and others**(1997 ACJ 185) and **Sumitra Devi –v- Executive Engineer, Udar Asthan Irrigation Division, Jahanabad, Gaya** (1997 ACJ 155).

On the other hand, learned counsel for the claimant argued that the finding of fact recorded by the Commissioner is based on documentary and oral evidence available on record as also on the admission of non-applicant that Gate Pass was issued in the name of the applicant as a labourer of the contractor for the work to be accomplished in the contract work of Bhilai Steel Plant. The above finding is a finding of fact and it is not open to the appellant to assail the same in an appeal under Section 30 of the Act. So far as non-examination of the qualified medical practitioner is concerned, Section 4(1)(c)(ii) of the Act refers to the cases of injury not specified in Scheduled I, however in the instant case, the applicant has lost her right limb just below the knee and the injuries specified at Sr. No. 19 of Part (2) of Schedule I, wherein for the injuries of such type, 60% loss of earning capacity has been specified.

I have heard learned counsel for the parties.

The applicant has examined herself as AW -1, Dropadi Bai as A.W. 2, D.K. Joshi as A.W. 3, and Vimal Kumar Gedam as A.W. 4

73

whereas non-applicant No. 1 has examined K.S. Raghwan- supervisor as NAW -1.

A.W. 1 the applicant and A.W. 2 Dropadi Bai have categorically stated that they were engaged by non-applicant No. 1 and Gate Passes of Ex. P-2 and P-4 were made in their name. This fact is admitted by K.S. Raghwan, the witness of non-applicant No. 1. The witnesses have further stated that as per instructions of their employer, they were engaged to spread gravel in railway line repairing work and at that time, one Pardesh was supervising the work on behalf of the non-applicant who used to record their attendance also in attendance register. Even D.K. Joshi A.W. 3 and Vimal Kumar Gedam A.W.4 who are Senior Manager, Bhilai Steel Plant and Inspector in TSI (Diesel and Transport) of Bhilai Steel Plant, in their diary statements of Ex. P-4 and Ex. P-5 have categorically stated that the non-applicant No. 1 was engaged in railway line repairing work. Their statements were recorded by the police immediately after the accident. A.W. 4 Vimal Gedam has categorically stated that he had given statement to the police as mentioned in Ex. P-5. From his statement before the police, it is evident that the accident occurred when the applicant was engaged on the work of non-applicant No. 1 and after learning about the accident, he reported the matter to the higher authorities and thereafter the applicant was admitted in the Hospital. Non-applicant has not produced the best evidence i.e. attendance register of the labourers who were engaged by the contractor for the work of railway line reparing/spreading of gravel as is evident from statement of supervisor N.A.W. 1 K.S. Raghwan.

The Bhilai Steel Plant in their written statement have admitted that the non-applicant No. 1 has been awarded the contract by the respondent No. 2. The fact that non-applicant No. 1 after receiving the intimation about the accident has communicated about the same to the non-applicant No. 3, the insurer, also establishes that the applicant was engaged by them for the said work. Thus the argument of the counsel for the non-applicant No. 1 that the Gate pass pertains to Coal Chemical Department of Bhilai Steel Plant and safety training was imparted to them only for the above work is concerned, this

72

contention has rightly not been accepted by the Commissioner in view of the fact that they have not produced any document relating to the work in which the accident occurred and secondly they did not examine Pardeshi who is stated to be Supervising the work at the relevant time by A.W. 1 the applicant and A.W. 2 Dropadi Bai and their statements find corroboration from the diary statement of Ex. P-5 of A.W. 4.

Thus on the basis of evidence available on record, no perversity is found in the finding of the learned Commissioner regarding accident of the applicant during the course of her employment with non-applicant No. 1.

So far as the argument based on judgment in the matter of New **India Assurance Company** (supra), is concerned, the referred judgment is relating to cases where the workmen sustained injuries not specified in Schedule I and where loss of earning capacity has not been specified, however in the instant case, the injuries sustained by the workman is specified in Section 2 of Schedule I Entry 19 and the loss of earning capacity has been assessed as 60%. For the purpose of assessing loss of earning capacity, paramount consideration is loss of earning capacity, depending on the nature of work the workman has to do and the injury as well as other surrounding circumstances and the same has to be judged by the Commissioner on the basis of individual cases and with due regard to the nature of avocation and disability certificate given by medical practitioner, though relevant, but the same cannot be decisive. In the instant case, it is not in dispute that the applicant is 23 years old labourer who earns her livelihood through her physical labour, her right limb below knee has been amputated and she can walk only with crutches. Looking to the nature of job in which the application was engaged, loss of earning capacity at 75% computed by the Commissioner cannot be faulted.

In the result there is no force in the appeal. The appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge